case seemed to admit this, and allowed the action as a proceeding *quasi in rem*, relying on the preliminary injunction as being sufficient to bring the property within its control, so as to deal with it judicially. This, however, seems hardly sound. An injunction assumes for its validity personal jurisdiction over the defendant himself; without that, it is a mere nullity. The object of seizure in the ordinary case is not merely to inform the owner of the property of the proceedings which are going on, but to give the court jurisdiction by bringing the property within its control. While it would, perhaps, be difficult to define just what steps are necessary for this purpose, it seems impossible to regard a void order as a sufficient taking charge of the property. Further, it cannot be contended that the fact that the petition expressly asks relief as to the land in question will of itself operate to bring the defendant's title to that land before the court; for such reasoning would render service on a garnishee unnecessary in any case. We have then simply a case where neither the property, nor the defendant, nor any one owning an interest in the property, are before the court. The mere assertion of control over property cannot actually give control any more than the mere assertion of jurisdiction over the person of the defendant will give validity to a personal judgment against him.

LIABILITY OF CORPORATIONS ON CONTRACTS OF THEIR PROMOTERS. — The English doctrine as to a promoter's contract treats that contract as existing between the promoter in his individual capacity and the third party, the corporation in whose behalf and in whose name the contract is made being unable to adopt, ratify, or confirm the transaction. *In re Northumberland Hotel Co.*, 33 Ch. D. 16. Accordingly a recent English decision holds that a company is not bound by a contract made in its behalf before incorporation, even though after incorporation it had expressly adopted the agreement. *Bagot Pneumatic Tyre Co.* v. *Clipper Pneumatic Tyre Co.*, 17 Times L. R. 117. The English doctrine is based on the established rule of law that acts done in behalf of a non-existent principal cannot afterwards be ratified. Consequently, it is said that, as a corporation does not legally exist until it is incorporated, it cannot ratify any act done in its behalf prior to that time. On technical grounds it is impossible to criticize the English doctrine, for a ratification relating back to the time when there was no principal seems an absurdity. Practically, however, the result reached in many cases is undesirable, and the courts in some jurisdictions in this country have been inclined to look behind the corporate entity and at the real principals, who were existing at least as a potential corporation at the time the contract was made. Accordingly a ratification sometimes has been allowed. *Whitney* v. *Wyman*, 101 U. S. 392; *Oaks* v. *Cattaraugus Water Co.*, 143 N. Y. 430; see 8 HARVARD LAW REVIEW, 357. However, the weight of authority is *contra* to such a view. Alger on Promoters, § 199. The difficulty with the doctrine of these cases, as expressed in *Oaks* v. *Cattaraugus Water Co.*, *supra*, is that it does violence to the established principles of ratification. A third doctrine has consequently arisen in this country, and represents perhaps the prevailing American view. It holds that though a corporation cannot ratify it may confirm its promoter's contracts by what is called adoption or acceptance — the theory being based on the

conception that the original contract is in the nature of a continuing proposal, which, if not withdrawn, the corporation on its organization may accept. Alger on Promoters, § 202; *Pratt* v. *Oshkosh Match Co.*, 89 Wis. 406. It is said that there can be no difference between its making a contract by accepting or adopting an agreement originally made in advance for it and its making an entirely new contract; the adoption or acceptance, though in its nature a ratification, differing in its legal effect in that the contract dates from the time of the adoption, and not from the time of the original transaction. *McArthur* v. *Times Printing Co.*, 48 Minn. 319. This doctrine, it would seem, is defensible on principle, as well as on practical grounds, though it will only cover that class of cases where the facts may rationally be construed as a proposal. In the principal case it does not appear from the brief report whether the facts could be so construed. The decision, however, is treated as governed by *In re Northumberland Hotel Co.*, *supra*, where the promoter acted expressly "as trustee on behalf of an intended company," and the third party intended to bind the company. Under such circumstances, where the parties who make the original contract intend that the corporation when formed shall become or have an opportunity of becoming a party to it, it does not seem unreasonable to treat that contract as constituting or including an offer open to the corporation to accept on its coming into existence.

BREACH AFTER PART PERFORMANCE OF INSTALMENT CONTRACTS. — There is much confusion in the law as to whether or not in an instalment contract a failure of performance with respect to one instalment justifies an abandonment of the whole agreement. In England, though the authorities are irreconcilable, there is a general tendency to maintain the contract, while the American decisions, on the other hand, incline toward the doctrine of *Norrington* v. *Wright*, 115 U. S. 188, allowing a rescission. In a contract to deliver wood in instalments, payment to be made on delivery, the Supreme Court of Michigan, after reviewing the authorities, decided that a refusal to pay for the third instalment was not such a breach as to excuse the defendant from making further deliveries. *West* v. *Bechtel*, 84 N. W. Rep. 69. The decision is put on the ground that under the circumstances the plaintiff's refusal to pay did not evince an intention no longer to be bound by the contract. The English decisions where non-payment is the breach are relied on, and the rule of *Mersey Steel Co.* v. *Naylor*, 9 App. Cas. 434, is adopted.

The court in the principal case evidently distinguishes a breach by non-payment from a breach by non-delivery, *Norrington* v. *Wright*, *supra*, being quoted as not involving the exact point at issue. On principle, it is difficult to discover any validity in the distinction. It is true that non-delivery may be and often is a breach *in limine*, while non-payment, owing to its very nature, must always be a breach after part performance. In divisible contracts, however, the materiality of the breach, as affecting the main object of the transaction, should not greatly differ whether made at the outset or after part performance. Although the parties cannot always be put *in statu quo*, they may at least be placed in substantially as good a position. If, then, we adopt the doctrine of *Norrington* v. *Wright*, *supra*, where the breach was non-delivery after a part of the first instalment had been accepted, it seems difficult to sup-